

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

**TYSONS CORNER
8000 TOWERS CRESCENT DRIVE
SUITE 1200
VIENNA, VIRGINIA 22182**

(703) 918-2300

NEW YORK, NY
WASHINGTON, DC
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ
BRUSSELS, BELGIUM

AFFILIATE OFFICES
JAKARTA, INDONESIA
MUMBAI, INDIA

FCC/MELLON

NOV 23 2004

04-422

FACSIMILE
(703) 918-2450
www.kelleydrye.com

DIRECT LINE: (703) 918-2315

EMAIL: wbrantl@kelleydrye.com

November 23, 2004

DATE STAMP & RETURN

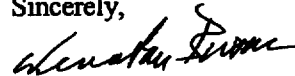
Federal Communications Commission
Wireline Competition Bureau – CPD – 214 Appls.
P.O. Box 358145
Pittsburgh, PA 15251-5145

Re: In the Matter of First Communications LLC Application for Consent to Transfer Of
Control of a Company Holding an International Authorizations and a Blanket Domestic
Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended

Enclosed for filing, on behalf of FirstEnergy Corp. and McKinley Communications LLC (collectively the "Parties"), please find an original and five copies of the above-captioned application. The Parties request authority for the transfer of First Communications LLC from FirstEnergy Corp. to McKinley Communications LLC. This application is being filed concurrently with the International Bureau via its IBFS electronic program.

Remittance Form 159 and a check to cover the \$895 filing fee are appended. An additional copy of this filing for date-stamp and return has been provided as well. If there are any questions regarding this application, please contact Joan Griffin at (703) 918-2320. Thank you in advance for your assistance with this matter.

Sincerely,



Winafred Brantl

Enclosures

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page 1 of 1

(1) LOCK BOX # 358145			
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Kelley Drye & Warren LLP		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$895.00	
(4) STREET ADDRESS LINE NO. 1 8000 Towers Crescent Drive			
(5) STREET ADDRESS LINE NO. 2 Suite 1200			
(6) CITY Vienna		(7) STATE VA	(8) ZIP CODE 22182
(9) DAYTIME TELEPHONE NUMBER (include area code) 703-918-2320		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0006-5547-78			
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME McKinley Communications, LLC			
(14) STREET ADDRESS LINE NO. 1 134 Sixth Street, S.W.			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY Canton		(17) STATE OH	(18) ZIP CODE 44702
(19) DAYTIME TELEPHONE NUMBER (include area code) 330-455-4000		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0012184644			
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$895.00	(27A) TOTAL FEE \$895.00		
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE		
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>W. Mark H. B. B. B.</u> certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <u>W. Mark H. B. B. B.</u>		DATE <u>11/23/04</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
FIRST COMMUNICATIONS LLC)	Docket No. _____
)	
)	
Application for Consent to Transfer)	
of Control of a Company Holding)	
International Authorizations and a Blanket)	
Domestic Authorization Pursuant)	
to Section 214 of the Communications Act)	
of 1934, as Amended)	

APPLICATION

FirstEnergy Corp. ("FirstEnergy") and McKinley Communications, LLC ("McKinley"),¹ by their attorneys, hereby request authority pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. §214 (the "Act"), and Sections 63.04 and 63.24(e) of the Commission's Rules, 47 CFR §§ 63.04, 63.24(e), for the transfer of control of First Communications LLC ("First") from FirstEnergy to McKinley. First is a common carrier that provides local and long distance telecommunications services to both business and residential customers in several states in the U.S. First holds Section 214 authority to provide international services on a resale basis.²

The Applicants respectfully request streamlined treatment of this Application pursuant to Sections 63.03 and 63.12 of the Commission's Rules, 47 C.F.R. §§ 63.03 and 63.12. This Application is eligible for streamlined processing pursuant to Section

¹ FirstEnergy and McKinley are collectively referred to as the "Parties" or "Applicants."

² See File No. ITC-ASG-20011001-00509, granted Nov. 2, 2001, in Report No. TEL-00460.

63.03(b)(1) of the Commission's Rules, 47 C.F.R. § 63.03(1), because neither McKinley nor any of its affiliates (as that term is defined in Section 3(1) of the Act) is a telecommunications provider. This Application also qualifies for streamlined treatment under Section 63.12 because, in accordance with Section 63.12(c), (a) neither McKinley nor First is affiliated with a foreign carrier, and neither company will become affiliated with any foreign carrier as a result of the proposed transaction; (b) neither McKinley nor First has any affiliation with any dominant U.S. carrier; and (c) no authority is requested to provide switched basic services over private lines to a country for which the Commission has not previously authorized the provision of switched services over private lines.

I. APPLICANTS

A. First and FirstEnergy

First is an Ohio limited liability company based in Akron, Ohio. Founded in 1984, First is a common carrier that provides local, private line and long distance services to both business and residential customers in several states in the U.S. Currently, First provides telecommunications services to approximately 70,000 customers, located primarily in Florida, Ohio, Indiana and Michigan. First's services include, in addition to traditional local and long distance services, toll-free services, conference calling packages, calling cards, prepaid calling cards, Internet access, and dedicated and private line services. First's telecommunications services are provided primarily on a resale basis using facilities and switches that are owned and operated by other telecommunications carriers.

FirstEnergy is a registered public utility holding company headquartered in Akron, Ohio. At present, FirstEnergy holds a 65 percent ownership interest in First.³ The remaining 35 percent ownership interest is held by Boich Investment Group, Ltd. ("Boich") of Columbus, Ohio.

B. McKinley

McKinley is an Ohio limited liability company based in Canton, Ohio. McKinley is an investment company. McKinley is controlled by Marbel Investments, LLC ("Marbel"), an investment company that is owned in equal shares by four (4) individual investors – Marsh Belden, Timothy Belden, Susan Belden, and Katherine Belden (the "Beldens"). Neither McKinley nor any of its affiliates currently provide any telecommunications services on a common carrier basis.

II. DESCRIPTION OF THE TRANSACTION

FirstEnergy and McKinley have reached an agreement in principle whereby FirstEnergy will sell to McKinley a 51 percent membership interest in First. The purchase price for the membership interest is \$18,000,000, subject to certain subsequent adjustments. The transaction is contingent on receipt of necessary regulatory approvals, among other things. After closing, McKinley will hold a 51 percent ownership interest in First, while FirstEnergy will hold a 14 percent ownership interest. The ownership interest of Boich (35 percent) will remain unchanged.

³ In December 2002, two shareholders of First, Tim Ireland and Dan Brower, assigned their ownership interests in First to FirstEnergy. While this transfer increased FirstEnergy's ownership interest in First from 28 percent to 65 percent, the transfer was *pro forma* because FirstEnergy at the time had *de facto* control of First. By the signature to this Application, FirstEnergy certifies that this assignment was *pro forma* in nature and that, together with all previous *pro forma* transactions (of which there are none), this assignment did not result in a change in the actual controlling party. FirstEnergy asks the Commission to accept this Application as the necessary notification of *pro forma* transfer of control under Section 63.24 of the Commission's Rules.

III. PUBLIC INTEREST STATEMENT

The transfer of control of First to McKinley will serve the public interest.

Maintaining a controlling interest in First is no longer consistent with FirstEnergy's goals and objectives. Grant of this Application, thereby permitting FirstEnergy to sell a portion of its ownership interest to McKinley, will allow FirstEnergy to decrease its interest in First in an orderly fashion. McKinley will supplement First's current management, the majority of whom will be retained post-close, and will bring additional capital to First. In so doing, McKinley will strengthen First and better ensure that it remains a viable long-term competitor in the telecommunications marketplace. Given the difficulties with which the competitive telecommunications industry is now struggling, the creation of a financially stronger telecommunications competitor would benefit consumers.

At the same time, no anticompetitive effects will result from the grant of this Application. Since this is an equity transaction as opposed to an asset sale, the transfer of control of First will not result in a change of carrier for First's customers. Immediately following consummation of the transaction, First will continue to provide high-quality communications services to its customers without interruption and without immediate change in rates, terms or conditions. In fact, the operations of First will largely continue to be determined by many of the same management, technical, and customer service personnel that currently oversee those operations. Since neither McKinley nor any of its affiliates is presently a participant in the telecommunications market, no competitors will be eliminated as a result of the proposed transaction. Also, the Parties note that neither Party has any foreign ownership or affiliations with any foreign carriers.

IV. INFORMATION REQUIRED BY SECTION 63.24(e) OF THE COMMISSION'S RULES

In support of this Application, the Applicants submit the following information pursuant to Section 63.24(e) of the Commission's Rules, including the information requested in Section 63.18:

- (a) Name, address and telephone number of Applicants:

McKinley Communications, LLC (Transferee)
134 Sixth Street S.W.
Canton, Ohio 44702
Tel: (330) 455-4000
Fax: (330) 455-4019
FRN: 0012-1846-44

FirstEnergy Corp. (Transferor)
76 S. Main Street, Suite 1600
Akron, Ohio 44308
Tel: (800) 646-0400
Fax: (330) 384-3866
FRN: 0012-1846-28

- (b) McKinley is a limited liability company organized under the laws of Ohio.
FirstEnergy is a corporation organized under the laws of Ohio.

- (c) Correspondence concerning this Application should be sent to:

Mark Clark Authorized Representative FirstEnergy Corp. 76 S. Main Street, Suite 1600 Akron, Ohio 44308 Tel: (330) 384-5817 Fax: (330) 384-3866	Ted Boyd Authorized Representative McKinley Communications, LLC 134 Sixth Street S.W. Canton, Ohio 44702 Tel: (330) 455-4000 Fax: (330) 455-4019
---	---

David L. Feltner Associate General Counsel FirstEnergy Corp. 76 S. Main Street, Suite 1600 Akron, Ohio 44308 Tel: (800) 646-0400 Fax: (330) 384-3875	Steven A. Augustino Kelley Drye & Warren LLP 1200-19 th Street, N.W. Suite 500 Washington, D.C. 20036 Tel: (202) 955-9608 Fax: (202) 955-9792 saugustino@kelleydrye.com Joan M. Griffin Kelley Drye & Warren LLP 8000 Towers Crescent Drive Suite 1200 Vienna, VA 22182 Tel: (703) 918-2300 Fax: (703) 918-2450 jgriffin@kelleydrye.com
---	---

- (d) First has authority to provide international services on a resale basis as granted in File No. ITC-ASG-20011001-00509. McKinley has not previously held Section 214 authority.
- (h) Following consummation of the proposed transaction, the following entities will hold a 10 percent or greater equity interest in First:

(1) McKinley:

McKinley Communications, LLC
134 Sixth Street S.W.
Canton, Ohio 44702
Citizenship: U.S.
Principal business: investment
Percent Equity: 51 percent

Marbel Investments, LLC holds an 80 percent ownership interest in and control of McKinley and thus will hold a 51 percent ownership interest in First following consummation of the proposed transaction. Marbel is a U.S. citizen whose address is the same as McKinley and whose principal business is investments. Marbel is owned in equal shares by Marsh Belden, Timothy Belden, Susan Belden, and Katherine Belden. The Beldens are U.S. citizens who principal business is investments and whose address is the same as McKinley. The Beldens govern Marbel by majority rule.

No other shareholder in McKinley holds a 10 percent or greater ownership interest in First under the FCC's ownership attribution rules.

(2) FirstEnergy:

FirstEnergy Corp.
76 S. Main Street
Suite 1600
Akron, Ohio 44308
Citizenship: U.S.
Principal business: energy
Percent Equity: 14 percent

No shareholder in FirstEnergy holds a 10 percent or greater ownership interest in First under the FCC's ownership attribution rules.

(3) Boich:

Boich Investment Group, Ltd.
17 S. High Street
Suite 1220
Columbus, Ohio 43215-3413
Citizenship: U.S.
Principal business: coal
Percent Equity: 35 percent

Wayne Boich, Sr. holds 100 percent of the ownership interest in Boich and thus a 35 percent ownership interest in First under the FCC's ownership attribution rules. Mr. Boich is a U.S. citizen whose principal business is coal and whose address is the same as the Boich Investment Group.

McKinley states that following consummation of the transaction, no officer or director of First will also be an officer or director of any foreign carrier.

- (i) As evidenced by the signatures to this Application, McKinley certifies that (a) McKinley is not a foreign carrier and is not affiliated with a foreign carrier, and (b) neither McKinley nor First will become a foreign carrier or become affiliated with a foreign carrier post-close.
- (j) As evidenced by the signatures to this Application, McKinley certifies that through its acquisition of control of First it does not seek to provide international telecommunications services to any destination country where (a) McKinley is a foreign carrier; (ii) McKinley controls a foreign carrier; (iii) any entity that owns more than 25 percent of McKinley, or that controls McKinley, controls a foreign carrier in that country; or (iv) two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of McKinley and are

parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.

- (k) Not applicable.
- (l) Not applicable.
- (m) Not applicable.
- (n) As evidenced by the signatures to this Application, McKinley certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route, and that neither McKinley nor First will enter into such agreements in the future.
- (o) As evidenced by the signatures to this Application, Applicants certify, pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules, that they are not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (p) Applicants request streamlined processing of this Application pursuant to Section 63.12 of the Commission's Rules, 47 C.F.R. § 63.12. This Application qualifies for streamlined treatment under Section 63.12 because, in accordance with Section 63.12(c), (i) neither McKinley nor First is affiliated with a foreign carrier, and neither company will become affiliated with any foreign carrier as a result of the proposed transaction; (ii) neither First nor McKinley has any affiliation with any dominant U.S. carrier; and (iii) no authority is requested to provide switched basic services over private lines to a country for which the Commission has not previously authorized the provision of switched services over private lines.

V. INFORMATION REQUIRED BY SECTION 63.04(b) OF THE COMMISSION'S RULES

In accordance with the requirements of Section 63.04(b) of the Commission's Rules, the additional information required for the domestic Section 214 transfer of control application is provided in Exhibit A.

VI. CONCLUSION

Based on the foregoing, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by grant of this Application.

Respectfully submitted,

FIRSTENERGY CORP.



Mark Clark
Authorized Representative
FirstEnergy Corp.
76 S. Main Street, Suite 1600
Akron, Ohio 44308
Tel: (330) 384-5817

David L. Feltner
Associate General Counsel
FirstEnergy Corp.
76 S. Main Street, Suite 1600
Akron, Ohio 44308
Tel: (800) 646-0400
Fax: (330) 384-3875

Its Attorney

Date: _____

MCKINLEY COMMUNICATIONS, LLC



Marsh Belden
Authorized Representative
McKinley Telecommunications, LLC
134 Sixth Street S.W.
Canton, Ohio 44702
Tel: (330) 455-4000

Steven A. Augustino
Kelley Drye & Warren LLP
1200-19th Street, N.W.
Suite 500
Washington, D.C. 20036
Tel: (202) 955-9608
Fax: (202) 955-9792
saugustino@kelleydrye.com

Joan M. Griffin
Kelley Drye & Warren LLP
8000 Towers Crescent Drive
Suite 1200
Vienna, VA 22182
Tel: (703) 918-2300
Fax: (703) 918-2450
jgriffin@kelleydrye.com

Its Attorneys

LIST OF EXHIBITS

EXHIBIT A	Domestic Section 214 Transfer of Control Information
------------------	---

EXHIBIT A

DOMESTIC SECTION 214 TRANSFER OF CONTROL INFORMATION

In accordance with the requirements of Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04, the Applicants provide the following information in support of their request.

63.04(b)(6): Description of the Transaction

The proposed transaction is described in Section II of the Application.

63.04(b)(7): Description of Geographic Service Area and Services in Each Area

A description of the geographic service areas and services provided in each area is described in Section I of the Application.

63.04(b)(8): Presumption of Non-Dominance and Qualification for Streamlining

This Application is eligible for streamlined processing pursuant to Section 63.03(b)(1) of the Commission's Rules, 47 C.F.R. § 63.03(1), because neither McKinley nor any of its affiliates (as that term is defined in Section 3(1) of the Act) is a telecommunications provider.

63.04(b)(9): Other Pending Commission Applications Concerning the Proposed Transaction

None.

63.04(b)(10): Special Considerations

None.

63.04(b)(11): Waiver Requests (If Any)

None.

63.04(b)(12): Public Interest Statement

The proposed transaction is in the public interest for the reasons detailed in Section III of the Application.